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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

NOS. 654, 655

PAUL GINSBURG, *Petitioner*,

v.

JOHN D. BLACK, ET AL., *Respondents*.

PAUL GINSBURG, *Petitioner*,

v.

THE FIRST NATIONAL BANK OF CHICAGO, and ALFRED L. KUEHN, *Respondents*.

PETITION FOR REHEARING

PAUL GINSBURG,
Counsel for Petitioner.

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PAUL GINSBURG, *Petitioner,*

v.

JOHN D. BLACK; JOHN C. SLADE; FRANK H. TOWNER; GUY ALLEN GLADSON; EDWARD G. INCE; JAMES H. CARTWRIGHT; HAROLD ARMSTRONG SMITH; FRED J. McMANUS; BRYCE L. HAMILTON; REUBEN A. BORSCH; DOUGLAS C. MOIR; JAMES D. HEAD; GERALD E. GRASHORN; GEORGE W. OTT; GRIER D. PATTERSON; WALTER A. WADE; PAUL H. MOORE; CHARLES J. CALDERINI; GEORGE B. CHRISTENSEN; THOMAS I. UNDERWOOD; ARTHUR D. WELTON, JR.; THOMAS A. REYNOLDS; FRANK B. GILMER; ROBERT McDOUGAL, JR.; ALBERT W. POTTS; WILLIAM C. MULLIGAN; THOMAS S. TYLER; NEAL J. McAULIFFE; ROBERT TIEKEN; doing business as Winston, Strawn, Shaw and Black; Alfred L. Kuehn and United States Creosoting Company, a corporation, *Respondents.*

PAUL GINSBURG, *Petitioner,*

v.

THE FIRST NATIONAL BANK OF CHICAGO, and ALFRED L. KUEHN, *Respondents.*

PETITION FOR REHEARING

Comes now Paul Ginsburg, petitioner in the above-captioned cases, and respectfully petitions the Court for

rehearing of its order denying the writs of certiorari entered herein April 28, 1952. In support thereof, petitioner respectfully shows:

The libels herein, held by the court below to be privileged, were uttered by attorneys against petitioner, himself an attorney. These libels by attorneys and respecting an attorney were admitted by the motions addressed to the complaint in the trial court to have been false and without probable cause to induce belief in their truth in a reasonable man, and to have been made maliciously. *Black,* R. 53-55. Both the briefs in opposition in this Court assert (*Black,* p. 5; *First Nat.,* p. 7) that because the remedy invoked by appellant was a discretionary matter—that is to say, that it was administrative rather than on the merits of the controversy—motive properly was relevant even though it might not be relevant with respect to a matter addressed to the merits under the Kentucky law. Thereby, there arises the question, not presented to this Court upon the original petitions for certiorari herein, whether false and scurrilous matters in direct contravention of the Canons of Professional Ethics (*vide* Canon 17 of the Canons of Professional Ethics of the American Bar Association) are, under applicable law, privileged not because they *are* pertinent to the merits but for the very reason they are *not* and cannot be pertinent to the merits.

Moreover, there is presented the question whether petitioner was not proceeding pursuant to his duty as a member of the bar to call to the attention of the Kentucky court fraud or deception which has been unjustly imposed upon the court by trustees subject to the court's control. Canon 41 of the Canons of Professional Ethics of the American Bar Association reads as follows:

> "When a lawyer discovers that some fraud or deception has been practiced, which has unjustly im-

> posed upon the court or a party, he should endeavor to rectify it; at first by advising his client, and if his client refuses to forego the advantage thus unjustly gained, he should promptly inform the injured person or his counsel, so that they may take appropriate steps."

The case, then, is one in which a lawyer, petitioner, pursuant to his duty to the court disclosed to the court a fraud or deception being practiced upon it by parties attempting to purchase the assets of an estate under judicial protection through grave misrepresentations as to their value. *Black,* R. 55. In contravention of their duty under the Canons of Professional Ethics, respondent attorneys representing the parties, and the parties themselves through their counsel, made a direct and personal attack upon petitioner in a false and scurrilous manner, and in such manner as to damage him in his name and reputation and in the practice of his profession. This attack was not launched in any way respecting the merits of the controversy, but only as to a matter which even respondents say was an administrative one—one within the discretion of the court—that is, whether petitioner should be recognized as a friend of the court. It is respectively submitted that this Court ought to grant the writs of certiorari to inquire whether, under the Kentucky law, such a personal attack in contravention of the Canons of Professional Ethics may be privileged, though false, libelous, and damaging to the attorney concerned.

Respectfully submitted,

PAUL GINSBURG,
Petitioner.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and is restricted to substantial grounds available to the petitioner although not previously presented.

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Petitioner